

MSA TOBACCO PAYMENTS
AND
THE NON-PARTICIPATING MANUFACTURER
(NPM) SETTLEMENT
(CONSENSUS FORECASTING GROUP)

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Office of State Budget Director

The Master Settlement Agreement

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- The Master Settlement Agreement (MSA) resolved litigation brought by the States vs. major tobacco companies for costs incurred in treating smoking-related illnesses
- 52 States and Territories are collectively the “Settling States”
- The original, major tobacco companies that were sued are the “Original Participating Manufacturers” (OPMs)
- The tobacco companies that subsequently joined in the settlement are the “Subsequent Participating Manufacturers” (SPMs)

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- OPMs and SPMs are subject to significant restrictions on advertising and marketing of tobacco products
- OPMs and SPMs have made and continue to make significant settlement payments to the Settling States
- The Commonwealth of Kentucky has received \$126.3 million in FY21 and \$2.44 billion in MSA payments in total

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Three types of payments to the States:

Initial Payments (1998 and 2000-2003)

- \$12.7 Billion

Annual Payments (2000 - Perpetuity)

- \$207.9 Billion through 2025
- \$3.6 Billion to Kentucky through 2025
- Based on “Allocable Share” - For Kentucky – 1.76%

“Strategic Contribution Fund” payments

- \$8.6 Billion in 2008-2017
- \$50.7 Million to Kentucky in 2008-2017
- Not based on “Allocable Share” - For Kentucky – 0.75%

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Three potential adjustments to the payments:

Inflation adjustment

- Greater of CPI growth or 3%

Volume adjustment

- Based on reductions relative to base volume

Non-participating manufacturers (NPM) adjustment

What is the NPM Adjustment?

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- Tobacco companies that don't join the MSA are “Non-Participating Manufacturers” (NPMs) and are free from MSA's marketing restrictions and the settlement payment obligations
- To prevent the NPMs from having a significant advantage in the marketplace, the Settling States each passed a “Qualifying Statute” requiring NPMs to make escrow payments for the cigarettes sold in each State
- The states are required to “diligently enforce” the provisions of the MSA, though “diligent enforcement” is not defined
- The reduction in payments is punitive – payments are reduced by triple the net market share loss above 2%

August 2021 – Planning Revenue Estimates

Planning Estimates

Fiscal Year 2022	\$109.8 Million
Fiscal Year 2023	\$105.6 Million
Fiscal Year 2024	\$ 97.2 Million
Fiscal Year 2025	\$ 91.4 Million
Fiscal Year 2026	\$ 88.7 Million